

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

JOEL CREIGHTON ADAMS and
NINA ROBERTS ADAMS

CASE NO.: 18-30495-KKS
CHAPTER: 7

Debtors.

UTAH POWER SYSTEMS, LLC,

ADV. NO.: 18-03014-KKS

Plaintiff,

v.

JOEL CREIGHTON ADAMS and
NINA ROBERTS ADAMS

Defendants.

ORDER GRANTING *PLAINTIFF'S MOTION FOR*
SUMMARY JUDGMENT (Doc. 88)

THIS CASE is again before the Court on *Plaintiff's Motion for Summary Judgment* ("Summary Judgment Motion," Doc. 88). In the Summary Judgment Motion, Plaintiff seeks revocation of Defendants' discharge under 11 U.S.C. § 727(d)(1).

On May 12, the Court entered an order requiring Plaintiff to submit additional briefing to address the second prong of § 727(d)(1), which is that "the requesting party did not know of such fraud until after the

granting of such discharge.”¹ Plaintiff having filed and the Court having reviewed its Supplemental Brief,² for the reasons set forth below the Court has determined that Plaintiff’s Motion for Summary Judgment is due to be granted.

As this Court has previously ruled, Plaintiff has met the requirement of the first prong of § 727(d)(1), which is that a court shall revoke a debtor’s discharge if “such discharge was obtained through the fraud of the debtor”³ Defendants’ actions, as alleged in the Summary Judgment Motion are significant enough on which to base revocation of their discharge: the unrefuted evidence shows that Defendants deliberately and in bad faith concealed and failed to list assets and transfers of assets.

As to the second prong of § 727(d)(1), the Court is unprepared to accede to Plaintiff’s assertion that the Eleventh Circuit’s discussion of legislative history related to § 727(d)(2) in *In re Thompson*,⁴ was designed or intended to repeal long standing precedent requiring parties seeking revocation of a discharge under § 727(d)(1) to demonstrate diligence. In

¹ 11 U.S.C. § 727(d)(1) (2020); *Order Requiring Additional Briefing on Plaintiff’s Motion for Summary Judgment* (Doc. 88), Doc. 96.

² *Plaintiff’s Additional Briefing in Support of its Motion for Summary Judgment*, (“Supplemental Brief”), Doc. 98.

³ 11 U.S.C. § 727(d)(1)(2020); Doc. 96.

⁴ *In re Thompson*, 939 F.3d 1279 (11th Cir. 2019).

Thompson the issue was whether the “lack-of-knowledge” requirement of § 727(d)(1) should be read into § 727(d)(2) based on the legislative history of that section of the Code.⁵ In addressing that question, the Eleventh Circuit discussed the legislative history of § 727(d)(2) and ultimately held, correctly, that the statutory text of Section 727 is “clear enough on its own: § 727(d)(1) contains a lack-of-knowledge requirement, while § 727(d)(2) does not.”⁶ The Eleventh Circuit did not address in *Thompson* what constitutes lack-of-knowledge for purposes of 727(d)(1); instead it noted that the 1978 version of the Bankruptcy Code does not include the overall reference to laches as related to § 727(d)(2).⁷ The Eleventh Circuit did not discuss, much less discount, cases cited in this Court’s order requiring further briefing in which courts have held that under certain circumstances, in the absence of diligence by the creditor revocation of a debtor’s discharge is improper.⁸

⁵ *Id.* at 1283.

⁶ *Id.* at 1284.

⁷ *Id.*

⁸ *In re Habash*, 360 B.R. 775, 778-79 (N.D. Ill. 2007). *See also, In re Kalliana*, 202 B.R. 600, 604 (Bankr. N.D. Ill. 1996) (“[i]f the creditor could have known of the alleged fraud, it has an affirmative duty to so investigate before the discharge is granted or the court will dismiss the requested revocation.”); *In re Arianoutsos*, 116 B.R. 116, 118 (Bankr. N.D. Ill. 1990) (creditor was in possession of enough information to put them on notice that schedules might be false); *In re Stein*, 102 B.R. 363, 367 (Bankr. S.D.N.Y. 1989) (“[w]hen the objecting plaintiff acted diligently in investigating the debtor's conduct and did not know, and did not have reason to know, that the debtor procured his discharge through fraudulent conduct, the objecting party may obtain an order revoking the debtor's discharge.”).

Bankruptcy courts have long required creditors to have exercised diligence in investigating facts during the administrative bankruptcy case, especially after having been put on notice of possible fraud.⁹ Published bankruptcy court opinions from courts within the Eleventh Circuit do not directly address this issue,¹⁰ just as the Eleventh Circuit did not squarely address the issue in *Thompson*.

Regardless, in its Supplemental Brief Plaintiff has demonstrated to the Court's satisfaction that it had no notice of possible fraud until after the discharge was entered and exercised sufficient diligence in investigating facts prior to entry of discharge.

As this Court has previously noted, the Debtors have a proven track record of avoiding discovery. The attachments to Plaintiff's Supplemental

⁹ See cases cited *supra* note 8; see also, *421 Chestnut Partners, LP v. Aloia*, 496 B.R. 366, 381 (Bankr. E.D. Pa. 2013) (citing 6 Collier on Bankruptcy, ¶ 727.17[3] (16th ed. 2012)).

¹⁰ E. g., *In re Smith*, 2017 WL 1214407 (Bankr. S.D. Ga., March 31, 2017) ("Revocation of a discharge under § 727(d)(1) is an extraordinary remedy and 'requires both the existence of fraud in procuring the discharge and proof that the party requesting the revocation of the discharge did not know of such fraud until after the granting of the discharge.'"); See *In re Irizarry*, 2012 WL 592886 (Bankr. M.D. Fla. February 17, 2012); See *U.S. v. Nettuno*, 74 A.F.T.R.2d 94-7231 (Bankr. M.D. Fla. 1994) ("IRS was scheduled by Debtor as a creditor in his bankruptcy, received timely notice of the case, and simply chose not to participate in the case. The IRS clearly had sufficient information prior to the entry of the discharge to put it on notice of the Debtor's alleged fraud and, as such, cannot sustain a claim under Section 727(d)(1) of the Bankruptcy Code."); *In re Putnam*, 85 B.R. 881, 883 (Bankr. M.D. Fla. 1988) (stating that the party seeking revocation of a discharge bears the burden of proving the conditions of § 727(d) have been met by a preponderance of the evidence.); and *In re Putnam*, 85 B.R. 881 (Bankr. M.D. Fla. 1988).

Brief, the *Declaration of Joshua Saval* in particular, show that any additional efforts to obtain discovery or honesty from these Debtors would have been futile.¹¹

For the reasons stated, it is,

ORDERED:

1. Plaintiff's Motion for Summary Judgment (Doc. 88) is
GRANTED.
2. Counsel for Plaintiff shall submit a Summary Final Judgment revoking the Discharge granted in favor of Defendants, Joel Creighton Adams and Nina Roberts Adams, to be entered in this adversary proceeding and in the main administrative Chapter 7 case.
3. All hearings in this adversary proceeding scheduled for
Tuesday, June 2, 2020, are CANCELED

DONE AND ORDERED on June 1, 2020.



KAREN K. SPECIE
Chief U. S. Bankruptcy Judge

cc: All parties in interest

Plaintiff's attorney is directed to serve a copy of this Order on interested parties and to file a Proof of Service within three (3) days of entry of this Order.

¹¹ Doc. 98-2, pp.1-4.